

STATE PROPERTIES COMMITTEE

Tuesday, August 31, 2004

The meeting of the State Properties Committee was called to order at 10:13 A.M. by Chairman Jerome F. Williams. Other members present were, Richard Woolley, Esquire, representing the Department of Attorney General, Messrs. Robert Griffith and John Ryan, representing the Department of Administration, Senator John F. McBurney III, Representative John J. McCauley, Jr., and Mr. Thomas Barry, Public Member. Also in attendance were, Mr. William Ferguson, from the Department of Administration, and Attorneys Alan Gelfuso, William Lynch, and Max Wistow.

1. OLD BUSINESS

2. NEW BUSINESS – Miscellaneous - The next meeting of the State Properties Committee is scheduled to be held on Tuesday, September 14, 2004.

The Department of Transportation had requested a special meeting to cover Item A, and since the meeting was scheduled, additional items were requested to be added.

ITEM A - DEPARTMENT OF TRANSPORTATION – A request was made by the Department for approval and signatures on Quit-claim Deed (Modification of Drainage Easement) with the Redevelopment Agency of Woonsocket, Highland Corporate Park, Woonsocket.

The Department had required rights in the property of the Woonsocket Redevelopment Agency in 1998 in conjunction with the Highland II Urban Collector. Those rights constituted a 57,307 square foot drainage easement. The Department did not own the property in

fee, but merely acquired an interest in the property. The City of Woonsocket, via the Redevelopment Agency of Woonsocket has asked the State to relinquish those rights in order to free up the property for the site of a new commercial complex called Summer Infant. It is an office structure that will feature a day care and several other businesses. The easements rights were acquired for \$1.00 at gratis value. The State is amenable to the reduction and the release of its interest in the easement area which measures 57,307 square feet and the easement rights will be relocated on other property retained by the Woonsocket Redevelopment Agency. This Quit-claim Deed will relinquish these rights.

A discussion took place as to whether or not the Highland II Urban Collector project was completed and if the State had any further use or interest in the property. The Department's work at this site is completed.

A Motion was made by Mr. Woolley and seconded by Mr. Ryan to approve the request of the Department for approval and signatures on Quit-claim Deed (Modification of Drainage Easement) with the Redevelopment Agency of Woonsocket, Highland Corporate Park, Woonsocket.

Passed Unanimously

ITEM B - DEPARTMENT OF TRANSPORTATION – A request was made by the Department for approval and signatures on Deed conveying land in Lincoln to 421 Lincoln Avenue Realty LLC.

On August 17, 2004, the Committee granted conceptual approval for the conveyance of 6,300 square feet of property to 421 Lincoln

Avenue Realty LLC. This property is on Lincoln Avenue between Jefferson Boulevard and Interstate Route 95 and is completely surrounded by property now of 421 Lincoln Avenue Realty LLC. This is not a stand alone piece of property and is not buildable. The Department has negotiated a price of \$2.10 per square foot for a total of \$13,309.59.

A Motion was made by Mr. Ryan and seconded by Mr. Barry to approve the request of the Department for approval and signatures on Deed conveying land in Lincoln to 421 Lincoln Avenue Realty LLC.

Passed Unanimously

ITEM C - DEPARTMENT OF TRANSPORTATION – A request was made by the Department for approval and signatures on Deed conveying land on Birch Street, East Providence to Fernando E. Pereira.

The State Properties Committee on August 17, 2004 granted the Department approval to convey property located at the corner of Massasoit and Birch Avenue in East Providence. The Department negotiated a price of \$3.00 per square foot. The property consists of 3,455 square feet of land. This is a non buildable piece of land. The Department negotiated a price of \$3.00 per square foot or \$10,365.00 for this property.

A Motion was made by Mr. Barry and seconded by Mr. Ryan to approve the request of the Department for approval and signatures on Deed conveying land on Birch Street, East Providence to

Fernando E. Pereira.

Passed Unanimously

ITEM D - DEPARTMENT OF TRANSPORTATION – A request was made by the Department for approval and signatures on Perpetual Easement Agreement with the Narragansett Electric Company over property on West Exchange Street, Providence licensed to Commodore Properties.

On April 21, 2004, the State Properties Committee approved and signed a License Agreement with Commodore Properties, LLC. Commodore Properties, LLC was the only bidder on an RFP which made available for vehicle parking 6,000 square feet of land on West Exchange Street, Providence. In order to utilize the property, Commodore Properties, LLC has to install a light system and a pass card gate for its assignees to go on to the site. In order to do that, the power has to be supplied to the parcel. This Easement Agreement between the Department and the Narragansett Electric Company will allow the installation of an aerial power line to service both the lights and the crash bar gate on the property. This is the final paper requirement before Commodore Properties can fully utilize the property. Commodore Properties will pay the Department upon commencement of use \$11,600.00 per year as rent, which was their successful bid.

A Motion was made by Mr. Barry and seconded by Mr. Ryan to approve the request of the Department for approval and signatures on Perpetual Easement Agreement with the Narragansett Electric Company over property on West Exchange Street, Providence

licensed to Commodore Properties.

Passed Unanimously

ITEM E - DEPARTMENT OF TRANSPORTATION – A request was made by the Department for approval and signatures on License Agreement with Deeble Holdings LLC for land at 1355 – 1357 Wampanag Trail, East Providence.

At the request of the Department, this item was deferred to September 14, 2004.

ITEM F – DEPARTMENT OF ADMINISTRATION – Operator Control Lease This item was an update. Mr. William Ferguson gave a presentation of what had transpired from the signing of the renegotiated Lease of June 8, 2004 and the termination letter of August 24, 2004 that was sent to Mr. Yip by the Department's Director, Beverly E. Najarian.

At this point in the meeting, Max Wistow, Esquire and William Lynch, Esquire, for Lantau Development, joined the table in this presentation.

Mr. Ferguson stated there were two items noted in the termination letter. One was that the landlord did not provide a Certificate of Insurance, or at least provided an inadequate Certificate of Insurance.

The second item was that fire code deficiencies cited in the report of November 13, issued by the State Fire Marshal's Office were not corrected.

(Senator McBurney joined the meeting at 10:30 A.M. at this point of the update.)

Mr. Ferguson went on to say the item that brought this to a head was

really more the Fire Code issue than the insurance issue. He gave some background on the Fire Code issues. He said this began November 13, 2003 when the State Fire Marshal conducted an inspection of the premises at 286 Main Street, Pawtucket. That inspection resulted in a report that indicated fifteen (15) fire code deficiencies were at the premises. It also indicated that these deficiencies were to be corrected within thirty (30) days. A variance was to be sought and approved with the Fire Code Board of appeals. (Mr. Robert Griffith joined the meeting at this point of the update). Subsequently, the flood occurred and on February 3, 2004 a letter was prepared and sent by Mr. Williams to Mr. Yip that included six (6) items that were requirements for reoccupying the space after the flood. One of those requirements was the Certificate of Insurance and another one was documentation that the landlord had complied with the Fire Inspection Report by correcting the fifteen (15) deficiencies. On June 8, 2004 a new Lease was signed that was renegotiated between the parties. Paragraph 15.18 of that Lease gave the landlord thirty (30) days to comply with the February 3 letter by providing, among other things, the documentation that the landlord had complied with the Fire Inspection Report of November 13, and the Certificate of Insurance as required by the Lease, which included listing the State as an additional insured. He stated further, on June 22 having not received a response yet to that Paragraph 15.18 requiring documentation that the Fire Code deficiencies were corrected, a letter was sent from Alan Gelfuso, Esquire to Max Wistow, Esquire, indicating that that section had not yet been met.

On July 26 the Department received a letter from William Lynch, Esquire, attorney for the landlord, saying that all of the deficiencies had been corrected some time ago and to the satisfaction of all. Mr. Ferguson went on to say, that the letter did not come from an architect, or did not indicate that an architect had gotten involved. In addition the letter did not indicate that the State Fire Marshal's Office had conducted a re-inspection. The Department then requested re-inspection of the premises. That re-inspection was done on July 30 indicated that of the fifteen (15) deficiencies that were cited in the November 13, 2003 report only four (4) had been corrected and eleven (11) remained outstanding. At that point this issue about Fire Code Safety and Fire Code compliance brought the termination issue to a head and resulted in the August 24, 2004 termination letter.

Attorney Gelfuso addressed the Committee and said that he wanted to make sure that everyone understood that the State Properties Committee, he doesn't believe, has the authority to direct the Department. Mr. Williams stated that this is an update on what action has taken place and that is all it is.

Senator McBurney commented, before Mr. Wistow spoke, knowing full well that the Department will be back to the Committee asking for permission to go out for proposals for space for the people who have been dislodged from the Registry site. The Chair said we will be back at some point in the future, but again, we are providing an up-date based on the on the termination letter, to the Committee.

Mr. Wistow stated it was not his purpose to ask the Committee to order a withdrawal of the termination letter. All that he wanted to do

was to present their side of what happened to indicate to the Committee that there are some issues which he believes the Committee should look into to try to ascertain the facts. He went on to say the reason being, that as Senator McBurney pointed out, this is merely a precursor to asking the Committee for permission to enter into leases, presumably, with other parties, which will inevitably lead to litigation involving the State in claims. Attorney Wistow wanted to show that there are substantial open issues that the Committee ought to try to get to the bottom of; not necessarily to order the withdrawal of the letter of termination, but to have it give its consensus to the Department of Administration of what might happen in the future with a request for a new Lease. He said that if indeed ultimately the Committee approved a new Lease, it will have been tantamount to approving the termination of the old Lease. The Chair, Mr. Williams said the Committee has the authorization to approve leases for the State of Rhode Island. That is the authorization given to this Committee. He said the management of leases falls within the Department of Administration. Mr. Wistow said it would be an abrogation of your authority to enter into a new Lease without inquiring as to why the old Lease is being terminated. He went on to say that he acknowledges what the Committee is interested in is shall we approve a new Lease. He said that again, it seemed to him, with existing leases in place, to just disregard that and to just look at the new Lease, would not be a full exercise of the Committee's authority. The Chair, Mr. Williams stated that Mr. Wistow could speak briefly and then get to the Committee's questions.

Mr. Wistow indicated that he wanted to present to the Committee a sufficient basis for the Committee to understand that there are factual and legal disputes that it should look into at some point.

Mr. Wistow handed a copy of the August 24 termination letter and the reasons for the termination. Mr. Wistow referred to the February 2004 inspection. One point he wanted to make, was that there were various disputes about that. That the effectiveness of the original termination of that Lease, which led to a negotiation of a brand new Lease. He said there were two Leases that previously existed before the Committee signed the Lease of May 28. One, the smaller Lease, for the Operator Control and two, for the rest of the building. He said that becomes relevant from a legal point of view. He said that basically what happened is that the new lease, which was executed by the Committee on May 28 and signed by the Director on June 8 was to be in accord and in satisfaction, a resolution of the existing disputes between the parties. There was no formal release of the old Leases. The new Lease was one lease to cover the same space occupied under the two former Leases. He went on to say that what happened was factually, the State never operated under the new lease. He distributed a letter dated June 22 from Attorney Gelfuso to him which was referred to earlier.

Attorney Gelfuso stated he did not know where we were going with this presentation before this board at this time. Discussion took place.

Attorney Wistow referred to Mr. Gelfuso's letter, in which he expressly indicated the following: (referring to the items which were

addressed earlier by Mr. Ferguson) –

“the above noted items are still open and needed. The State of Rhode Island hereby gives you notice of its reservation of rights to contest the commencement date based on the failure of the landlord to comply with the requests set forth in the February 3, 2004 letter as set forth above.”

Mr. Wistow stated that Mr. Gelfuso on behalf of his client, said that the items that are being talked about today, would be the basis to contest the commencement date of the lease. The commencement date of the lease that we are talking about (the new lease was as of May 14, two weeks before it was signed by this agreement). Mr. Gelfuso said that he was not happy with what the landlord was doing and reserved the right to contest that the rent would start on May 14; said nothing about terminating.

Mr. Wistow went on to say that in fact, the State never operated under the lease they are now attempting to say they want to terminate. They never paid any of the rent under the new lease, although the rent was supposed to commence May 14. To date, they have paid rent only under the old Operator Control Lease and that is completely consistent with Mr. Gelfuso's letter to him. Mr. Wistow stated, that we know that by July 1 the State already had concerns about the certificate they had received from Attorney Lynch and Mr. Yip and the reason we know that they had concerns is because there was a memo from Kevin Carvalho to John Ryan expressly discussing the issue. (A copy of the letter was distributed).

Attorney Gelfuso stated he was not sure that it was appropriate that

we start having exhibits made part of the public record of this hearing. Attorney Wistow said they were furnished to him and are no longer private documents.

The Chair again stated that this is not a hearing—it is an update and would ask that Mr. Wistow make his points and then he would open it up for questions. Discussion took place. Mr. Wistow said that there were representations made to this Committee which he considers to be incomplete and in some respects misleading. He stated that he would like to put it on the record. He said that the point he wanted to make is that as early as July 1 the certificate was sent over. If you look at Mr. Gelfuso's letter to him of June 22, he acknowledged at that time receipt of the actual policy itself, which is more important. He said no complaint as to the insurance policy or the certificate as made until August 24, the purported termination. He said he would explain why that is extremely important.

Attorney Gelfuso intercepted that this is an exercise in futility. More discussion took place and the Chair stated again that the administration of leases belongs in the Department of Administration.

He asked that Mr. Wistow complete his presentation relative to his information and then he would open the meeting up for questions. Mr. Wistow said that if the Committee ultimately voted on allowing entry into a new Lease without having the facts as to why the old Lease is still in place, he believed that would be a mistake. He said that the absolute alleged deficiencies that the State is claiming they are guilty of expressly require notice under the Lease for those deficiencies and the notice is required under the Lease to be given in

a certain specified way which has not been done. He said that the reason he knows it has not been done is, because there is a memo of August 4 from Mr. Ryan to “Jerry” indicating that there was a hand delivery of certain reports from the Fire Marshal. Mr. Wistow distributed a copy of this memo that he had been given. He said that under the terms of the Lease the landlord warranted that there were no deficiencies under the various codes. There was a warranty at the time of the signing. It also provided that if the State intended that there was a breach of such warranty, there would be notice given and an opportunity – 15 days to cure. He went on to say, what is contended is that there was notice given on August 2. Mr. Wistow referred to the memo from Mr. Ryan to “Jerry”. He said the Lease requires notice be hand delivered to Lantau Development – hand delivered it or sent Certified Mail Return Receipt Requested. That was not done. The only way it was delivered was a hand delivery to Mr. Lynch’s office when he was on vacation and there was a representation made in the memo by Mr. Ryan dated 8/4/04 that Mr. Quintero of the Fire Marshal’s Office would also mail it Certified Mail (today or tomorrow). He said that was not done and unfortunately Mr. Yip never got the notice required under the Lease until very recently.

The Chair advised Mr. Wistow had two minutes to finish up. He said that he has not been able to get into all of the facts he wanted, and he was very reluctant to believe that there was relationship between what is going on in front of the Board of Elections with Mr. Gelfuso representing the Governor’s Office and Mr. Lynch and himself

representing the Democratic Party.

Discussion ensued. The Chair reiterated that this was an update and while he believes he may not have had the opportunity to present all the facts, at a point when there is an actionable item on the Agenda, he can come back. The Chair strongly stated that this was an update on a business decision that was made relative to the Lease.

Mr. Wistow stated that he is gratified to hear that and he misunderstood the thrust. He went on to say that if the Chair is now saying that if indeed it comes time to approve a new Lease they will have an opportunity to heard on this, then this casts a completely different shadow on it. Mr. Wistow thanked the Committee for the time and while he did not get an opportunity to present all of his facts, apparently there was no need to because nothing of any significance was going to happen today and hopes to be invited to make a complete presentation the next time, which will give him further opportunity to develop further facts. The Chair reiterated that the board can take up authorization to enter into leases, but the management of leases falls within the confines of the Department of Administration. He said that any action the Committee takes there will be ample time for him to come and make comments, but this is not a hearing board.

Senator McBurney asked if what he heard correctly is, that most of the reasons for the State to send notice that they were breaking the Lease were for issues that existed or that were found on inspection in February of 2004. Attorney Gelfuso stated he would respectfully decline to answer that question and does not think it appropriate at

this point. Senator McBurney said that Attorney Gelfuso came before the Committee in May and asked the Committee to agree to a Lease that evidently there were problems that they knew about in February, three months beforehand. He asked why did we enter into a Lease when these problems existed prior to the Committee executing the lease. He asked why the Committee was not informed that in fact these facts existed. He said that he would not have approved that Lease in May if he knew those problems existed. The Chair stated that when the Committee approved the Lease, we identified that there were six (6) items that were to be corrected that were listed in the February letter. The six (6) items were listed specifically in the language of the Lease and the expectation was that those six (6) items would be corrected. Senator McBurney said that if those deficiencies were so sufficient that would lead the Department to break this Lease in August, he does not feel the Department should have entered into the lease until those items were corrected. Senator McBurney also asked, based on a newspaper article where Director Najarian was quoted, about the moving expenses and rent and asked if the State had incurred close to \$500,000.00 for the problems at the Main Street location. He went on to say, that if we did incur those expenses and he was aware of that, he would not have approved the Lease back in May until there was assurance the money could be recouped. The Chair stated that the State did incur expenses and that there is a claim in the insurance relative to those expenses and there is not a final answer yet on that claim from the insurance carrier. Senator McBurney said, so, to lead his constituents to believe that

this registry has cost them close to \$500,000 is not completely true is it? The Chair, stated we do not know that yet until the response to the claim is received. Senator McBurney's point was, if that is the way he was going to be advised as a member of the Committee and that the public is going to be advised by the Department as to the full ramification of this Lease and the breach of it, then he is going to hard pressed when the Department comes before him and asks that he vote to approve new leases when he knows there is going to be a suit by the current landlord, to saddle the taxpayers with two \$3M leases for property.

The Chair stated that it is now August 31. The six (6) items that were listed in the Lease were expected to be taken care of within a very short period of time and we are sitting here now in August and some of those items have not been complied with. We are talking about life/safety issues. Mr. Wistow said that he was not allowed to address any of that. The Chair responded that he had allowed him about twenty minutes and that the Chair will now respond with comments. He went on to say, this is not a hearing. But he listened to the comments relative to what has been done and hasn't been done; he knows from re-inspections that some of that work has not been done in that building. The Chair stated that this is not a hearing process, but the intent was to provide information. He said no action is being taken today and an update is being provided. The Chair went on to say, that we would move forward the next time when there is something before the Committee that is an actionable item. The Chair also made the point that it is August 31 and no one could sit

here and tell him that everything on that list from the Lease has been completed. Mr. Wistow said that he could tell him something relative to that that's very important. The Chair, Mr. Williams said, unless you can tell me that everything is completed,----Mr. Wistow stated that an appeal has been filed as to some of those things because some of those things are inaccurate and make no sense. The Chair inquired why that was not done 2 ½ - 3 months ago? Mr. Wistow said because it was done in a timely basis when we got formal notice.

Mr. Ferguson wanted to clarify a point, that the Lease provides 30 days for the landlord to comply with the six (6) points in the February 3 letter so that would have been July 8 and the other point is that this Lease was signed based on representations that the building was in compliance with applicable codes. And that is an item in the Lease and only found out later that was not the case.

Representative McCauley inquired if that is because of the new Code. Mr. Ferguson said it is based on the November 3, 2003 inspection.

All items presented to the Committee were approved by all present. There being no further business to come before the Committee, the meeting adjourned at 11.03 A.M.

Anne L. Lanni, Executive Secretary